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December 19, 2024

VIA ECF

Hon. Richard Mark Gergel
U.S. District Court for the District of South Carolina
J. Waites Waring Judicial Center
83 Meeting Street
Charleston, South Carolina 29401

Re: *In Re Aqueous Film-Forming Foams Products Liability Litig.*, MDL No. 2873

Dear Judge Gergel:

The group of Plaintiffs with pending claims against the Government (the “Government Claimants”) and Defendant United States of America (the “Government”) respectfully submit this letter in regard to the upcoming oral argument on a set of jurisdictional motions filed by Government that include: (i) an omnibus motion to dismiss claims filed by the Government Claimants’ under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680 (“FTCA”) and the FTCA’s Discretionary Function Exception, 28 U.S.C. § 2680(a) (“DFE”), (ii) an omnibus motion to dismiss the claims of a subset of Government Claimants who seek injunctive relief for lack of subject matter jurisdiction under section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9613(h) (“CERCLA § 113(h)”); and (iii) a site-specific motion to dismiss the claims of another subset of Government Claimants that arise from AFFF-related PFAS contamination at Cannon Air Force Base pursuant to the FTCA, DFE, and CERCLA § 113(h).

Pursuant to Case Management Order (“CMO”) 25 and stipulated protocols in the above-captioned matter, the Government filed the referenced motions to dismiss on February 26, 2024, the Government Claimants filed its response briefs on April 16, 2024, and the Government filed reply briefs on August 16, 2024. Subsequently, the Government Claimants filed a motion for leave to file a sur-reply relating to the Government’s omnibus FTCA/DFE motion on September 6, 2024, which the Court granted over the opposition of the Government on October 29, 2024.

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On November 4, 2024, the Court issued Notice of Hearing on the aforementioned motions to dismiss, set for hearing on February 7, 2025, at 11:00am, to follow the Case Management Status Conference. *See* ECF No. 6340.

Consistent with the time allotted for oral argument at the hearing the Court held in August 2022 on the defendant manufacturers' government contractor defense, and given the scope of the issues and briefing on the Government's jurisdictional motions, the parties jointly propose that oral argument be held over a two-hour period, with the first hour and twenty minutes devoted to the Government's site-specific and omnibus motions to dismiss under the FTCA and DFE, and the remaining forty minutes devoted to the Government's site-specific and omnibus motions to dismiss under CERCLA § 113(h). The parties further propose that each side be allotted forty minutes for their respective FTCA/DFE arguments and twenty minutes for their respective CERCLA § 113(h) arguments. Since the Government is the moving party, it would argue first under the parties' proposal and could choose to reserve time for a reply, advising the Court at the commencement of the argument how it wishes to divide the time between its arguments in chief and reply.

In an effort to streamline the scheduled oral argument on February 7, 2025, and to ensure elucidation of any and all outstanding issues in this matter, the parties respectfully invite the Court to identify any questions or concerns about their respective positions in advance of the hearing to allow the parties ample opportunity to prepare their arguments. Any clarification from the Court beforehand would be greatly appreciated and further facilitate direct and targeted answers to the Court's questions.

Respectfully submitted,

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